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P.O. Box 291
Portage, WI 53901
October 27, 2008

DAVID E. HARVEY
Primary Examiner
Art Unit 2621
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

re: U.S. APPLICATION NUMBER: 10/680830
FILING DATE: 07OCT03
NAME OF APPLICANT: Timothy Raymond Cronin
TITLE OF INVENTION: Certified protection from subliminal
content for recordings.

Dear Examiner Harvey:

Thank you for examining my patent application. The Office Action Summary indicates that this action is non-final — Therefore I request reconsideration of my patent application. I've read the Office communication you've sent with the Office Action Summary, and below I will try to address the reasons you've given for rejection of my patent application's claim.

Below I refer to the numbered items in your Office communication. Items 3, 5, 7, 9, 10, and 11 appear to be either informational or do not pose explicit rejection reasons. However regarding item 10 (f) (1): I used the USPTO publication A Guide to Filing a Utility Patent Application as a guide to writing my patent application. And on p.5 under "BACKGROUND OF THE INVENTION" it states "This section may also include a paraphrasing of the..."Field of Invention."

I wasn't sure which U.S. patent Classification Definition would apply to my invention, so didn't include that since it was optional. The Public Information Services "Information Contacts" October 2003 booklet which I have shows that Art Unit 2621 is under Patent Technology Center: Image Analysis, Fax.

Regarding item 10 (f) (2): I do not intend to amend my patent application, but please see Appendices A & B of this letter.

re: 1, A): My patent application's method sidesteps a whole class of technical problems by making possible the availability of subliminal-free recordings to those who would like to purchase them.

re: 1, B): Jandel's patent isn't about subliminal-free copies of recordings, but subliminal-contaminated or potentially subliminal-contaminated ones. And the detection of that contamination via an electronic sensor system. Jandel's method wouldn't protect an observer of subliminal-contaminated recordings from exposure to subliminals, even if the alarm sounded. And Jandel not without reason seems implicitly to presuppose that all subliminally transmitted information would be harmful to an observer of that information, which might not be true in all cases. However protection may, also, refer to control of information an observer receives, which is the principal reason my patent application uses the concept "protection from."

re: 1, C): Subliminals are never undetectable — Subliminals are by definition detectable by their human observers, although unconsciously. And as such could conceivably be sorted from their host information, perhaps by using sensors that were homologous to the sensory capabilities of human beings. Jandel's approach to the problem of subliminal contaminated recordings seeks to identify the presence of subliminal content in video recordings. This method if brought to market could be attractive to individual consumers, and to the recording industry for quality control checking. But unlike Jandel's approach, my patent application's claim involves a method of making completely subliminal-free copies available for sale to for example the mass market.

re: 2, A): Certification is the record of verification. The American Heritage Dictionary of the English Language gives these definitions: "certify 1.a. To confirm formally as true, accurate, or genuine; testify to or vouch for in writing. 1.b. To guarantee as meeting a standard; attest." And "verify 1. To prove the truth of by presentation of evidence or testimony; substantiate. 2. To determine or test the truth or accuracy of, as by comparison, investigation, or reference." (See Appendix A: especially Cora Daniels' and Scott Gottlieb's articles).

re: 2, A) & B) and 6 A) & B): The nature of the certification process is not part of my patent application's claim. Certification is widely used in commerce everyday to allow transactions to proceed for matters great and mundane. For example, a store manager signs off on a certificate to verify that a vendor's representative came to the store and filled that vendor's product at a given time or on a certain day. Certification usually means that a paper trail

or its modern equivalent exists leading to someone responsible having signed off on the verity of something.

Certification as it relates to my patent application's claim is part of a method to ensure preservation of the subliminal-free nature of the information on the copies being produced for sale. The absence of subliminals in the master recordings would be preserved in the copies made in such a way so as those copies were kept free of additional information. This absence would conceivably allow these copies if checked to be found to be free of subliminals. And consequently verifiably so.

However, the mass consumer would not be expected to be able to perform such checks, which would in effect be quality control checks. The mass consumer would be relying instead on the certification process and finally upon the reputation of the manufacturers. Otherwise who's guarding the guards. In other words, certifying that recordings are subliminal-free puts a stop to potentially endless checking and double checking, and ultimately destructive testing. In part by avoiding that pitfall, my patent application's method makes the sale of subliminal-free recordings possible.

re: 2, D) & 6, B): While it may be impossible to absolutely verify the absence of something in someone else's work output, one can certify specific limits for a set of information that was originated by its owner (as you note Mori et al. implied was possible. The improvement to video editing equipment which Mori et al.'s invention seems largely to be directed to could be applied to home video recording environments as you've described). Either by the owner originating that information, or by that owner somehow knowing that the original information was subliminal-free.

How an owner could verify as subliminal-free information which that owner did not originate, but wanted to put into masters is not part of my patent application's claim. And, more generally, how those masters came to be subliminal-free, also, is not part of my patent application's claim. But my patent application's claim uses verification as part of the method to obtain subliminal-free recordings for sale.

re: 2, B): And self-origination of content for master copies logically suggests that a verification step is possible. Owning information (e.g. music or images) implies knowing what that information is. The owner of information which is intended to be recorded for sale, by not adding subliminals to that information; is, thus, able to verify the absence of subliminals in that information.

re: 2, C): In item # 0003 of my patent application's Specification, the "Brief Summary of the Invention" explains my

discovery. That is "Certified verifiably subliminal-free audio and video recordings...offered for sale...." In brief, that is the whole thing — That's the method.

The possibility of some sensor systems not detecting some subliminals as you mention in 1C of Page 2 of your Office Action Summary is precisely the kind of problem the method put forth by my patent application's claim would if implemented circumvent. Such implementation would free potential customers from doubt about the complete content of recordings which were offered for sale and which were so certified. This, since they would be verifiably certified as being subliminal-free.

In item #0006 of that same Specification, in the "Detailed Description of the invention" I express steps (although I didn't number them) which "I perceive...[would be] the best method for my invention to be implemented by the recording industry" to allow for certification that the recordings were subliminal-free. Those steps numbered below for the first time are not the invention nor are they the discovery of my patent application's claim. But they are inherent to it.

And they are a subset of possible implementation methods, and they are not exclusive of other means of implementing verification, certification, and getting the specified products to market in their intended form. Those steps leading to non-falsified certification (from item #0006) are:

- 1) "...verify the exact content of information which it [the recording industry] intends to make copies of."
- 2) "...protect that information so that no additions can be made to it."
- 3) "...securely control the production of recorded copies of that information: and to do so in a way that allows manufacturers of those recordings to certify that each copy would be verifiably free of any information which is not overtly and clearly specified as being part of the contents of each copy."

re: 4: My patent application's claim, which you refer to on Page 4 as "claim 1," is essentially about a manufacturing process improvement which will result in superior product quality, which improvement cannot be stolen.

The interests of the consumer, and the trade (including manufacturing and sales) which is based on those interests, and the protection of intellectual property rights may all be advanced by commercial sales of certified verifiably subliminal-free recordings. No one has ever pursued this approach as far as I can tell. A list of references in Appendices A & B (see) are I believe examples which show that. Industry and even governmental focus apparently has

not contemplated and is not contemplating my discovery's method. Nor the potential benefits of certified verifiably subliminal-free products on the recording industry. What has apparently exclusively been proposed, instead, regarding the issue of theft of intellectual property has been political fixes or technological fixes, alone or in combination. And wherein which the technological fixes have not seemed to envision the concept of incorporating product purity which was intrinsically irreproducible. To make certified verifiably subliminal-free copies, intellectual property thieves would have to identify themselves as thieves via the certification process to establish that their subliminal-free reproductions of the stolen information was truly subliminal-free.

Methods of securing the product during its manufacture and transport, and while it was being warehoused, and at points where it would be offered for sale, as well as quality control methodology are not the subjects of my patent application's claim. But such methods do exist such as Kodak's Traceless technology and technologies alluded to in a speech by Scott Gottlieb (see Appendix A).

My discovery which I hope to get patented would likely have been employed by now if it had been invented earlier. The recording industry's market conditions due to piracy and other forms of theft would, I believe, have driven its use. As would the vast size of the recording industry's market which would have legitimated its use even if only niche market sales were contemplated. Please see Appendix C for some examples of this.

re: 4 & 8: "Certified verifiably subliminal-free audio and video recordings..offered for sale..." may seem too obvious — But I've never seen or heard of such products for sale. Nor is it an attempt to create a so-called "troll." My discovery is directed to getting subliminal-free recordings to consumers who may wish to buy them and is a composition of ancient concepts which is new to the recording industry. And which comprises a method which if implemented by the recording industry would improve that industry's products for its own betterment and that of its customers.

Once implemented, my discovery's method would not impugn the content purity of recordings marketed without its implementation. But the superior product quality which cannot be stolen which if generated by the implementation of my discovery's method would obviate the need for political, legal, and other technical intellectual property protections at least within its intended markets. Large markets which could be expected to grow due to advertising, product familiarity, and word-of-mouth.

And since the recording industry markets are so huge (total CD sales in the U.S. may be in the \$400 - \$600 million/year range) certified verifiably subliminal-free recordings could account for substantial product movement, and of new industry which provides that product.

Not everything that can be verified as being subliminal-free will be subsequently certified as such. And even if certified as being verifiably subliminal-free will be offered for sale to the general public: there probably are manufacturers of recordings to which the certification trail would be anathema. So I believe Mori et al., does not anticipate my discovery since it implicitly anticipates only a subset of parts of the method which make up my patent application's claim. And which alone, though well known, are not the composition of concepts which together form a method new to the recording industry — One method which if implemented could defeat piracy in its intended market niche.

Examiner Harvey, there is one final issue which I ask you to consider: the shown filing date for my patent application on the cover sheet for the Office communication which you mailed to me in October 2008 might be wrong. In the summer of 2005, in response to a "Notice To File Missing Parts..." letter from the USPTO, I sent a revised Specification which included an expanded Abstract of the Disclosure. Would that submission change my original patent application date?

Please note that in October 2006 I responded timely to the Decision on Petition by the Office of Petitions (mailed to me October 18, 2006). In that response I asked for reconsideration of that decision. But only much later did I receive any communication from the USPTO. And that communication was a note attached to a refund check which stated "Due To Original Application Was Found." I took that to mean that my patent application of 10/07/2003 was found. I now realize that that may not have been a confirmation of my patent application's original filing date which is 10/07/2003: something I thought I had adequately proven to the USPTO with my communications to the USPTO which included a bank certified copy of the check used for the original filing fee, a copy of the post card sent in my original patent application, and a copy of the USPS "Express Mail" mailing label.

Thank you for your consideration of these requests.

Sincerely,



Timothy Raymond Cronin